

ENVIRONMENTAL PROTECTION

WATERSHED MANAGEMENT

Stormwater Management

Reproposed New Rule: N.J.A.C. 7:8-1.2

Proposed New Rule: N.J.A.C. 7:8-1.6

Authorized by: Bradley M. Campbell, Commissioner
Department of Environmental Protection

Authority: 13:1D-1 et seq.; 13:9A-1 et seq.;
13:19-1 et seq.; 40:55D- 93 to 99; 58:4-1 et
seq.; 58:10A-1 et seq.; 58:11A-1 et seq.;
and 58:16A-50 et seq.

Calendar Reference: See Summary below for explanation of
exception to calendar requirement

DEP Docket Number: 20- 03 -08 /417

Proposal Number: PRN _____

Submit written comments on these proposed amendments by November 14, 2003
to:

Gary J. Brower, Esq.
Attn: DEP Docket Number 20-03-08/417
Office of Legal Affairs
NJ Department of Environmental Protection
PO Box 402
Trenton, NJ 08625- 0402

The Department of Environmental Protection (Department) requests that commenters submit comments on diskette as well as on paper. The Department prefers Microsoft word 6.0 or above; however, other word processing software that can also be read or used by Microsoft Word 6.0 is acceptable. MacIntosh formats should not be used.

Comments should be identified by the applicable N.J.A.C. citation, and comments related to the summary description of a particular rule section should be included with comments on that section. Since comments will be sorted electronically, the following format should be used for each comment to the extent practicable:

(tab)citation(tab)Comment: Organization name (or individual name for an individual not representing an organization) followed immediately with the phrase "believes that" and comment text. For example:

7:8-1.2 Comment: ABC organization believes that the definition of "stormwater management facility" should also include outlet structures.

The agency proposal follows:

Summary

This notice of proposal is excepted from the rulemaking calendar requirement by having a 60-day comment period, pursuant to N.J.A.C. 1:30-3.3(a)5. On January 6, 2003, the Department of Environmental Protection (Department) proposed to repeal and replace the Stormwater Management rules, N.J.A.C. 7:8. (35 NJR 119(a)) The January 6, 2003 proposal contained a definition of "major development" which included a provision that would have allowed certain major development, which had obtained specified local approvals to continue to be processed under stormwater management standards applicable before adoption of the proposed new rules. (See 35 N.J.R. 119(a), 144) The comment period for the proposal closed on April 7, 2003. Based upon the Department's review of the definition of "major development" contained in the January 6, 2003 proposal and comments received on the original proposal, the Department is now re-proposing the definition of "major development" and is additionally proposing a new section, at N.J.A.C. 7:8-1.6. This proposed new section will clarify the Department's

intent regarding the applicability of the proposed Stormwater Management rules to major development.

At this time, the Department is seeking public comment on the re-proposed definition of “major development” and the new applicability section, N.J.A.C. 7:8-1.6. The Department will consider and address all comments previously received regarding the definition of “major development” in the January 6, 2003 proposal. The Department will coordinate all new comments with the previous comments. Commenters who submitted comments on the January 6, 2003 rule proposal should not reiterate or resubmit those comments.

Stormwater Management Rules

Subchapter 1. General Provisions

The Department is re-proposing the definition of “major development” which appeared in the January 6, 2003 New Jersey Register to eliminate applicability provisions from this definition. The Department is re-proposing this definition in response to comments received on the scope of the exemption provided by the definition. In addition, several people were unable to easily locate the “grandfather” provisions that were included within the definition of “major development.” The Department is proposing to create a new section, N.J.A.C. 7:8-1.6, Applicability to Major Development, which will contain modified applicability standards as summarized below.

The Department is also proposing to eliminate from the definition of major development the condition that development must be in a site plan or subdivision plan to be considered major development. Certain projects that qualify as major development, such as governmental projects, may not require site plan or subdivision plans. As applicability provisions are being eliminated from the definition of major development and proposed at new N.J.A.C. 7:8-1.6, reference to site plan or subdivision plans as a factor in determining if a major development is subject to the new requirements is now included in the proposed new provision.

N.J.A.C. 7:8-1.6 Applicability to Major Development

The definition of “major development” proposed January 6, 2003 provided that projects that received preliminary or final subdivision or site plan approval prior to the effective date of the rule would be excluded from the definition of “major development.” Several commenters questioned the extent of the “grandfathering” provided by this definition and further questioned what types of approvals should be sufficient to qualify for exemption from the requirements of the proposed new Stormwater Management rules.

Grandfathering recognizes that projects that have reached a certain stage have expended potentially significant resources on design based upon the rules that were in place at the time of application and approval. Since imposing new requirements could require additional expenditures for redesign, if the project meets the grandfather criteria, the project is allowed to continue to completion relying on the previously applicable standards, provided changes are not made to the initial plan.

Upon review of the originally proposed definition of “major development” and comments on this proposed definition the Department determined that it would be appropriate to propose changes in the “grandfathering”/applicability provisions that had been included in the definition of “major development.”

First, the Department determined that the proposed definition did not clearly express the concept of “grandfathering” intended to allow projects, which have reached a specified stage of design to continue to rely upon the rules in existence at the time of permit processing. Particularly, since the January 6, 2003 rule proposal was to have repealed and replaced the existing stormwater provisions of the Department’s Land Use Regulation Program rules with the proposed new rule at N.J.A.C. 7:8 under which the project would not be covered as it would not fall within the definition of “major development,” the definition could be literally interpreted to have excluded these projects even from the regulations that were in place prior to this rulemaking.. Accordingly, the definition of “major development” could be argued to insulate projects, which received local approvals under the Municipal Land Use Law prior to the effective date of the new rule from complying with any stormwater management requirements, which is clearly not the intent of the rule. To eliminate this confusion, the Department is clarifying that projects which qualify for grandfather treatment must comply with the stormwater

requirements contained in the Department's rules in effect immediately prior to the effective date of these new rules. To proceed otherwise would have been inconsistent with the stated objective of the rule proposal: "...to significantly improve the performance objectives and methods of mitigating adverse impacts of post-construction stormwater in New Jersey." (35 NJR 119).

The Department is further proposing to amend the applicability provisions of the stormwater rule requirements through proposed new rule N.J.A.C. 7:8-1.6 to ensure protection of New Jersey's water resources. The proposed new Stormwater Management rules include a requirement to maintain existing groundwater recharge of stormwater on an average annual basis. In addition, the rules provide additional best management practice requirements in the form of buffers or special water resource protection measures for those waters designated Category One under the Surface Water Quality Standards at N.J.A.C. 7:9B. Category One waters are being designated by the Department at the direction of Governor McGreevey for the specific purpose of protecting drinking water sources and ecologically significant water resources. Upon further review and consideration, the Department determined that the originally proposed definition of "major development" could result in significantly greater impact than initially anticipated. If the potentially overly-broad exemption created by the definition of "major development" proposed on January 6, 2003 was adopted, the Department determined that it could not accomplish the anticipated benefits of the proposed stormwater rules and the upgraded protections for all waters and specifically for Category One waters.

The need for additional protection is supported by the Department's "New Jersey 2002 Integrated Water Quality and Assessment Report," submitted to, and approved by, the U.S. Environmental Protection Agency as required by section 305(b) of the Federal Clean Water Act. That report concludes that of 2,308 non-tidal river miles assessed, 1,913 miles (83 percent) did not meet surface water quality standards for at least one of the following parameters: total phosphorus, pH, dissolved oxygen, nitrate, fecal coliform, total suspended solids, total dissolved solids, unionized ammonia and metals. Of 2,063 river miles assessed for use attainment only 22 percent fully attained all designated uses. Further, of 2,462 non-tidal river miles assessed for aquatic life use attainment, only 28 percent fully supported this use. Point sources of pollutants are closely regulated through

the New Jersey Pollutant Discharge Elimination System with strict effluent limitations designed to achieve the surface water quality standards. Therefore, non-point source pollution, such as that contributed by stormwater, is potentially a major contributing factor to the failure of these rivers and streams to achieve the surface water quality standards and the designated uses prescribed therein. This assessment highlights the need to improve water quality through better stormwater management techniques. Creating a major category of exemptions from the proposed stormwater management regulations would not only defeat this purpose, but would likely result in the deterioration of water quality and the impairment of designated uses in additional stream segments.

Therefore, the Department is proposing to consider whether a project has received preliminary or final site plan or subdivision approval as one of the components to determine if a major development should be “grandfathered” under the newly proposed applicability provision, but not the sole determining factor.

In order to provide for “grandfathering” that acknowledges that in certain circumstances a significant amount of resources continue to be expended to advance projects that would now be captured by the changing provisions of the proposed rule without creating an overly broad exemption, at proposed N.J.A.C. 7:8-1.6, Applicability to Major Development, the Department is proposing to grandfather projects which have received local approvals provided they have also received at least one Department permit which included stormwater analysis prior to the effective date of this rule.

Proposed N.J.A.C. 7:8-1.6(a) makes clear the Department’s intent that development meeting the definition of “major development” must comply with the provisions of the stormwater management rules, with certain limited exceptions described in the following paragraphs of the rule proposal.

At proposed N.J.A.C. 7:8-1.6(b)1, the Department proposes to allow projects categorized as major development to continue to meet the requirements of the rules in effect prior to adoption of the new Stormwater Management rules if they do not require Department approvals specified in proposed N.J.A.C. 7:8-1.6(c) and have received specified forms of local approval prior to the effective date of the new rules. These specified forms of local approval include preliminary or final site plan approval, final municipal building or construction permit, minor subdivision approval and preliminary or

final subdivision approval unless those projects need subsequent site plan approval under the Municipal Land Use Law. If subsequent site plan approval is required or if Department approvals as described below are needed, then a local approval under the Municipal Land Use Law is not by itself sufficient basis for exemption from Department stormwater requirements. The reasons for requiring a companion qualifying Department approval are twofold. First, the companion permit, where applicable, will ensure that a grandfathered project has undergone a stormwater review. Secondly, since Department permits have a five-year effective life, this requirement will assure that the exemption will not have an unlimited life. There is considerable variability among local requirements as to the scope of review and level of detail required for preliminary and final approvals as well as the timing of those approvals. For example, in some cases property may be subdivided for a future commercial or industrial complex with no specific development plans having been drafted. These types of projects typically require future site plan approval under the Municipal Land Use Law prior to development at which time the detailed engineering and planning is completed. For such subdivisions, there has generally not been significant investment made in the design of these projects at the subdivision approval stage and stormwater planning has not been analyzed in any great detail, if at all. Because there is an opportunity to plan, design and engineer these projects in conformance with the new stormwater rule at the site plan approval stage without having already incurred significant expenditures in designing to meet the existing stormwater standards, grandfathering of subdivision approvals that still require site plan approval would not be appropriate. Therefore, N.J.A.C.7:8-1.6(b)1 and 2 require that projects possessing subdivision approval, where subsequent site plan approval is required and has not been secured prior to the effective date of the new rule, must comply with all requirements of the new rules.

Where a project requires Department approvals specified in proposed N.J.A.C. 7:8-1.6(c), proposed N.J.A.C. 7:8-1.6(b)2 provides that, for the project to qualify for exemption, the major development must have obtained local approval prior to the effective date of the rule, and must also have obtained at least one of the Department permits specified in proposed N.J.A.C. 7:8-1.6(c) applicable to the proposed development, and which involved a stormwater review, prior to the effective date of the

new rules. Department approvals covered by this provision include stream encroachment permits, freshwater wetlands approvals, Coastal Area Facility Review Act permits and waterfront development permits.. These permits are required as companions to the local approvals when required for a project because they involve a stormwater management component, and as such will ensure that a grandfathered project has been designed in conformance with the Department's existing stormwater requirements.

Proposed N.J.A.C. 7:8-1.6(b)3 provides an exemption for governmental construction projects, such as roads, that do not require approvals under the Municipal Land Use Law, provided that those projects have secured at least one of the Department permits specified in proposed N.J.A.C. 7:8-1.6(c) applicable to the proposed development, and which involved a stormwater review, prior to the effective date of the new rules.

Proposed N.J.A.C. 7:8-1.6(d) provides that the grandfathering period will only continue as long as the underlying approvals on which grandfather status is based remain in effect. Essentially the grandfathering period is governed by the qualifying approvals. When either of the qualifying approvals expires, any new application shall be subject to the new Stormwater Management rules. The expiration of a local approval under (b)1 will be determined based on local ordinances. The Department recognizes that some local approvals listed at (b)1 do not have expiration dates. In those cases and where a Department permit is necessary under (b)2, the expiration of the Department permit will determine the expiration of the exemption. Where an applicant has secured more than one qualifying Department approval, the exemption shall expire with the last Department qualifying approval unless the qualifying local approval expires first.

Proposed N.J.A.C. 7:8-1.6(e) makes clear that where a qualifying local or Department approval is issued for a portion of a site or proposed project, only that portion of the project receiving the qualifying approval shall be entitled to an exemption. Additionally, if the exempt project is changed in any way that requires any revision, modification or amendment of the qualifying approvals in (b), the exemption is deemed void unless, upon application, the Department determines that the change would have a de minimis impact on water resources. The Department will consider such factors as increases in impervious surface, increases in stormwater generated, increases in

stormwater pollutant loading, changes in land use, increased disturbance of special water resource protection areas, and changes in vegetative cover in determining whether any revisions have a de minimis impact on water resources.

Proposed N.J.A.C. 7:8-1.6(f) notes that in some cases the grandfathering provisions included in this proposal may conflict with a provision in the Coastal Permit Program Rules (N.J.A.C. 7:7-4.4(a)4) which states that application may rely on the Rules on Coastal Zone Management (N.J.A.C. 7:7E) that are in effect on the date the application is declared complete for final review. In a limited number of circumstances this provision may be in conflict with the grandfathering provision proposed here. In cases of conflict, the provisions of this proposal shall supersede the provision in the Coastal Permit Program Rules.

SOCIAL IMPACT

The repropose definition of “major development” and the proposed new N.J.A.C. 7:8-1.6, Applicability to Major Development, would restore the beneficial social impact noted in the rule proposal published as part of the January 6, 2003 rule proposal. Without these proposed changes the positive social impacts associated with the reduction of nonpoint source pollution, increased channel stability, protection of groundwater recharge, reduction of soil erosion and ensuring the adequacy of bridges and culverts cannot be assured. As set forth in the January 6, 2003 proposal, the proposed new rules would have a positive effect upon those persons living in municipalities where a stormwater management plan and implementing ordinance are adopted. Flooding and pollutants from stormwater runoff associated with development may pose a threat to public health, safety and property. These rules are intended to: (1) reduce potential flooding and nonpoint source pollution problems; (2) encourage groundwater recharge; (3) protect the integrity of stream channels; (4) reduce soil erosion; and (5) ensure the adequacy of bridges and culverts. The standards proposed in these rules are intended to provide increased protection from flood damage, erosion and water quality degradation. By decreasing flooding and controlling pollutants associated with stormwater, the January 6, 2003 proposal will, with the applicability corrected as proposed herein,

decrease stormwater related damage to public health, private property and the environment.

ENVIRONMENTAL IMPACT

The Department's "New Jersey 2002 Integrated Water Quality and Assessment Report" concludes that of 2,308 non-tidal river miles assessed, 1,913 miles (83 percent) did not meet surface water quality standards for at least one of the following parameters: total phosphorus, pH, dissolved oxygen, nitrate, fecal coliform, total suspended solids, total dissolved solids, unionized ammonia and metals. Of 2,063 river miles assessed for use attainment only 22 percent fully attained all designated uses. Further, of 2,462 non-tidal river miles assessed, only 28 percent fully supported the aquatic life use. Since point sources of pollutants are now closely regulated through the New Jersey Pollutant Discharge Elimination System with strict effluent limitations designed to achieve the surface water quality standards, non-point source pollution, such as that contributed by stormwater, is potentially a major contributing factor to the failure of these rivers and streams to achieve the surface water quality standards and the designated uses prescribed therein. This assessment highlights the need to improve water quality through better stormwater management techniques.

In addition, the environmental benefit of the January 6, 2003 proposal in regard to protection of the State's exceptional water resource value waters as designated Category One under the Surface Water Quality Standards, N.J.A.C. 7:9B would be eliminated for those developments grandfathered by the Department's January 6, 2003 proposed definition of "major development."

Technical construction of the definition of "major development" contained in the January 6, 2003 rule proposal would create a larger than anticipated exemption for all projects that receive local approvals under the Municipal Land Use Law prior to the effective date of the rule from new and existing Department stormwater runoff requirements, thus creating a major category of exemptions that does not exist in the existing rules at N.J.A.C. 7:8. This exemption would result in additional water quality impairments and would not only significantly impact the positive benefits anticipated from the proposed rules, it would likely result in the continued deterioration of water

quality and the impairment of designated uses in additional stream segments going forward.

Even if projects having site plan or subdivision approval prior to the effective date of the January 6, 2003 proposed rule were subject to the requirements of the existing adopted rule at N.J.A.C. 7:8, that universe of projects is likely to be so large that the additional stream segments will become impaired. At a minimum, the rule would forfeit many opportunities for the water quality protections envisioned by the January 6, 2003 proposal.

The re-proposed definition and new applicability rule would preserve the anticipated benefits to be achieved by the proposed new rules by closing the potentially overly-broad exemption created by the definition of “major development” proposed on January 6, 2003. The exemption in the January 6, 2003 proposal, if interpreted literally, would result in a weakening of the current stormwater management regulations for those projects qualifying for the exemption. The proposed change in the definition of “major development” and the addition of N.J.A.C. 7:8-1.6, Applicability to Major Development, would limit the universe of “grandfather” exemptions to those projects that have been designed based upon the existing stormwater management requirements and are making diligent progress toward completion thereby restoring the environmental benefit of the proposal as stated in the environmental impact assessment contained in the January 6, 2003 rule proposal summary, without causing extraordinary hardship on active projects.

ECONOMIC IMPACT

This proposal will broaden the class of projects affected by the amendments proposed on January 6, 2003. Compliance with the stormwater management requirements for major development subject to the proposed new Stormwater Management rules as a result of this re-proposed definition and proposed new rule may result in somewhat higher costs for future development. Additional costs may be incurred by developers to comply with the new performance standards including costs associated with additional best management practices on development sites, maintenance of those practices over time, and the potential loss of units or the reduction in scope of a project.

However, the end result is expected to be reduction in long term costs associated with flooding, water supply depletion, water supply treatment and environmental damages.

Compliance with the proposed special protection measures for Category One waters may generate an increased financial burden on developers with projects covered by the repropose definition and proposed new rule that would have qualified for “grandfather” exemption under the previously proposed definition of “major development.” The implementation of special protection measures may result in costs for additional best management practices. The special water resource protection measures may impact the scope and extent of development potential of a parcel, but may also add value to areas adjacent to the special water resource protection area. This burden is offset by the protection of the State's most sensitive and pristine waters. In addition, preventive approaches stressed in the proposed new Stormwater Management rules (see 35 N.J.R. 119(a)) are cost effective in the long term.

This change in the definition of “major development” will not alter the economic analysis provided with the January 6, 2003 rule proposal as it pertains to the development and review of municipal and regional stormwater management plans.

FEDERAL STANDARDS ANALYSIS

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (as amended by P.L. 1995, c. 65) require State agencies which adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. There are no current, analogous Federal requirements for stormwater management planning; however, there are several Federal programs concerning stormwater runoff and nonpoint source pollution control. These are discussed below.

Clean Water Act

The Federal Clean Water Act (33 U.S.C. 1251 et seq.) requires permits under Section 402 of that Act for certain stormwater discharges. The Department's requirements to obtain such permits are set forth in the New Jersey Pollutant Discharge

Elimination System Rules, N.J.A.C. 7:14A, rather than in these Stormwater Management rules being repealed and repromulgated.

Section 319 of the Clean Water Act authorizes a Federal grant-in-aid program to encourage states to control nonpoint sources. The Department developed a management program for nonpoint source control under which the Department issues grants to local, regional, State, and interstate agencies as well as to nonprofit organizations to, for example, develop or monitor best management practices to control stormwater.

Coastal Zone Management Act

Under Section 6217(g) of the Coastal Zone Management Act Reauthorization and Amendments of 1990 (CZARA), P.L. 101-508, the U.S. Environmental Protection Agency (EPA) has published "Guidance Specifying Management Measures For Sources of Nonpoint Pollution In Coastal Waters" (CZARA 6217(g) Guidance). States may opt to participate or not participate in overall coastal zone management program, with no penalty for non-participation other than the loss of Federal grants for this program. No mandatory Federal standards or requirements for nonpoint sources pollution control are imposed. The CZARA 6217(g) Guidance includes management measures for stormwater runoff and nonpoint source pollution control from land development as well as many other source types. The Department has developed a coastal zone management program, including a component addressing coastal nonpoint pollution control. The Stormwater Management rules at N.J.A.C. 7:8 are one means by which the Department implements its nonpoint pollution control program.

The Department has determined that neither the new Stormwater Management rules proposed on January 6, 2003 nor this repromulgated definition and proposed new rule contain any standards or requirements that exceed the standards or requirements imposed by Federal law. Accordingly, Executive Order 27(1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65) do not require any further analysis.

JOBS IMPACT

As indicated in the January 6, 2003 proposal, the Department does not anticipate that the repeal and proposed new Stormwater Management rules will have a major impact

on jobs. However, the development and implementation of watershed stormwater management plans has the potential for some increase in jobs in consulting and/or public planning. Municipalities that undertake municipal stormwater management planning under the revised rules are likely to use existing planning and engineering staff to oversee the planning process. While some municipalities may employ consultants to assist in municipal stormwater management planning, the Department does not expect that existing consulting firms will increase their workforce as a result of the modified Statewide standards. The Department does not anticipate that either the proposed Stormwater Management rules or the re-proposed definition of “major development” and proposed new N.J.A.C. 7:8-1.6 will increase or decrease the number of jobs in the construction industry.

Some increase in jobs in the consulting and/or public planning area for the development and implementation of regional stormwater management plans is possible. New planning and analysis activities would be necessary for the completion of watershed stormwater management plans. However, these plans are voluntary. The Department intends to support local watershed planning efforts with financial and technical assistance as possible and appropriate.

REGULATORY FLEXIBILITY ANALYSIS

In accordance with the New Jersey Regulatory Flexibility Act N.J.S.A. 52:14B-16 et seq., the Department has determined that the re-proposed definition of “major development” and the proposal of new rule N.J.A.C. 7:8-1.6, Applicability to Major Development, may impose compliance requirements on small business. To comply with the stormwater management requirements of the rules, which these proposals amend, small businesses proposing new major development may be required to utilize additional best management practices for stormwater control. Additional costs that may be incurred include the need to hire professional consultants, such as engineers. Small businesses covered under the rules as a result of the re-proposed definition of “major development” and the proposed new N.J.A.C. 7:8-1.6 may also be impacted by the required maintenance of any stormwater best management practices on their property. The

Department has balanced the costs imposed on small business against the environmental benefits achieved by the best management practices and determined that it would be inappropriate to exempt small businesses from the requirements of this chapter. It is noted that the costs that may be incurred by small businesses are generally equivalent to those that may be incurred by individuals and homeowners proposing “major development.”

AGRICULTURAL INDUSTRY IMPACT

In accordance with P.L. 1998, c.48, which amends the Right to Farm Act, and in accordance with N.J.S.A. 52:14B-4(a)2, which requires that an Agriculture Industry Impact statement be included in rule proposals, the Department has evaluated this rulemaking to determine the nature and extent of the proposed new Stormwater Rules and amendments' impact on the agriculture industry. This rule proposal will not significantly affect the agricultural industry since few agricultural practices are governed by the Municipal Land Use Law. The Department anticipates that the water quantity, water quality, and groundwater recharge management provisions in the January 6, 2003 rules will not have a significant impact on existing farming policies. The re-proposed definition of “major development” and proposed new N.J.A.C. 7:8-1.6, Applicability to Major Development, will not significantly impact existing farming policies. Compliance with the stormwater management requirements for new agricultural development regulated under these rules may require additional best management practices and maintenance of any proposed best management practices.

SMART GROWTH IMPACT

Executive Order No. 4 (2002) requires State agencies which adopt, amend or repeal any rule adopted pursuant to N.J.S.A. 52:14B-4(a) of the Administrative Procedure Act, to describe the impact of the proposed rule on the achievement of smart growth and implementation of the New Jersey State Development and Redevelopment Plan (State Plan). The Department has evaluated this rulemaking to determine the nature and extent of the proposed rules' impact on smart growth and the implementation of the State Plan.

The proposed new rules as amended by the re-proposed definition of “major development” and proposed new N.J.A.C. 7:8-1.6 will encourage smart growth through the implementation of a number of State Development and Redevelopment Plan Statewide Policies including comprehensive planning, Resource Planning and Management Policies, Urban Revitalization, Water Resources, Open Lands and Natural Systems. This rulemaking accomplishes this by promoting regional planning processes for stormwater management that are coordinated beyond local jurisdictional boundaries. Local and regional stormwater planning elements in this rule prevent water pollution, integrate land use planning and natural resource information, coordinate water quality and land use programs, protect ground water sources, establish and maintain special water resource protection areas, and convey stormwater naturally. The new rules as amended by the re-proposed definition of “major development” and proposed new N.J.A.C. 7:8-1.6 strongly encourage use of better site design techniques that minimize impacts to the environment through nonstructural stormwater management strategies.

The new rules, including the re-proposed definition and proposed N.J.A.C. 7:8-1.6, reflect the differences in stormwater recharge considerations in already developed urban areas. The new rules and amendments do not increase obstacles for urban redevelopment by specifically eliminating the need to meet the new groundwater recharge performance standard in urban redevelopment areas and by encouraging revitalization through mitigation and restoration. The rules and amendments further advance the Governor's Smart Growth policies by providing clear technical standards and guidance to the regulated public. This promotes more predictable, certain and expeditious review and approval processes. Elimination of uncertainty in the review process is an important factor in attracting business necessary for appropriate development and redevelopment of urban areas.

The Surface Water Quality Standards, N.J.A.C. 7:9B, establish criteria for classifying certain waterways as Category One Waters, which, because of their clarity, color, scenic setting, other characteristics of aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resources) are in need of special protection from measurable changes in water quality characteristics. The new rules and amendments provide

additional protection through special water resource protection areas for waters designated Category One. This policy in combination with minimizing obstacles for urban redevelopment implements the principles of smart growth by focusing new growth into redevelopment of New Jersey's older urban areas, while protecting existing open space and conserving exceptional value natural resources.

Full text of the re-proposed definition and proposed new rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

CHAPTER 8

STORMWATER MANAGEMENT

SUBCHAPTER 1. GENERAL PROVISIONS

7:8-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

...

"Major development" means any "development" that provides for ultimately disturbing one or more acres of land or increasing impervious surface by one-quarter acre or more. Disturbance for the purpose of this rule is the placement of impervious surface or exposure and/or movement of soil or bedrock or clearing, cutting, or removing of vegetation. Projects undertaken by any government agency which otherwise meet the definition of "major development" but which do not require approval under the Municipal Land Use Law, N.J.S.A. 40:55D-et seq., are also considered "major development."

...

7:8-1.6 Applicability to Major Development

(a) Except as provided in (b) below, all major development shall comply with the requirements of this chapter.

(b) The following major development shall be subject to the stormwater management requirements in effect on [the date one day prior to the effective date of this rule], copies of which are available from the Department at the address specified in N.J.A.C. 7:8-1.3:

1.Major development which does not require any of the Department permits listed in (c) below and which has received one of the following approvals pursuant to the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) prior to [the effective date of this rule]:

i. Preliminary or final site plan approval;

ii.Final municipal building or construction permit;

iii.Minor subdivision approval where no subsequent site plan approval is required;

iv.Final subdivision approval where no subsequent site plan approval is required; or

v.Preliminary subdivision approval where no subsequent site plan approval is required;

2.Major development which has received one of the approvals pursuant to the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) in (1) above prior to [the effective date of this rule] and has secured at least one of the applicable permits listed in (c) below from the Department by [the effective date of this rule], and provided that the permit included a stormwater management review component.

3.Major development undertaken by any government agency, which does not require approval under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., provided the project has secured at least one of the applicable Department permits listed in (c) below prior to [effective date of this rule], and provided that the permit included a stormwater management review component.

(c)For the purposes of this section, the term “permit” shall include transition area waivers under the Freshwater Wetlands Protection Act. In order to qualify under (b)2 or 3 above, the major development must have obtained at least one Department

permit granted under the following statutes and, provided that the permit included a stormwater management review component, prior to [the effective date of this rule]:

1.Flood Hazard Area Control Act, N.J.S.A. 58-16A-50 et seq.;

2.Freshwater Wetlands Protection Act, N.J.S.A.13:9B-1 et seq.;

3.Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq.;

4.Waterfront and Harbor Facilities Act, N.J.S.A. 12:5-3;

(d) An exemption provided by (b) above shall expire with the expiration, termination or other loss of duration or effect of either of the qualifying local approval or Department permit, whichever comes first. The expiration of local approvals under (b)1 above shall be governed by local ordinance. In the event there are multiple qualifying Department permits under (c) above, the expiration date is governed by that permit which expires last provided that the permit is still in effect. Once the exemption expires, the major development shall be subject to all requirements of this chapter upon reapplication for that permit and all subsequent permits or local approval(s) under the Municipal Land Use Law.

(e)An exemption under (b) above is limited to the land area and the scope of the project addressed by the qualifying approval(s) and permit(s). Exemptions under this section shall be deemed void if revisions are made to the qualifying approval or permit in (b) above, including approvals under the Municipal Land Use Law, unless upon application, the Department determines that each revision would have a de minimis impact on water resources. In making this determination, the Department shall consider the extent of any impacts on water resources resulting from the revision, including, but not limited to:

- 1) increases in stormwater generated;
- 2) increases in impervious surface;
- 3) increases in stormwater pollutant loading;
- 4) changes in land use;
- 5) new encroachments in special water resource protection areas; and,

6) changes in vegetative cover.

(f)In case of conflict with the Coastal Permit Program Rules at N.J.A.C. 7:7-4.4(a)4, the requirements of this chapter shall supersede.

Based on consultation with staff, I hereby certify that the above statements, including the Federal standards analysis addressing the requirements of Executive Order 27 (1994), permit the public to understand accurately and plainly the purposes and expected consequences of these proposed amendments. I hereby authorize this proposal.

Date: _____

Bradley M. Campbell, Commissioner
Department of Environmental Protection